

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4729 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 - No

SAMANTSINGH C VAGHELA

Versus

COMMENDANT,

Appearance:

MR MAYUR R SHAH for Petitioner
Ms MANISHA LAVKUMAR, AGP instructed by
M/S MG DOSHIT & CO for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 10.3.1977 passed by the Commandant of the State Reserve Police Force, Ukai dismissing the petitioner from service on the ground that the petitioner had remained unauthorisedly absent from 7.3.1976.

2. The learned AGP has raised a preliminary objection that the petition suffers from gross delay as apart from the fact that the dismissal order was passed on 10.3.1977, the petitioner's appeal was also dismissed by the Deputy Inspector General of Police in December, 1977. Hence, the petition filed long after the accrual of cause of action may not be entertained.

3. In para III of the petition, the petitioner has offered an explanation. According to the petitioner, the petitioner had preferred an appeal to the State Government in the Home Department in the year 1979, but he did not receive any reply. The petitioner did not have sufficient means and the petitioner approached the Legal Aid Committee in the year 1985 and, therefore, the petition came to be filed in the year 1986.

4. Apart from the fact that the petition suffers from gross delay, even on merits the petitioner is not able to offer any explanation for his having remained unauthorizedly absent. The petitioner did not give any reply in the departmental inquiry. In this petition all that he has stated is that when the petitioner went to the Surat Market, the petitioner fell ill and his mental condition was not good and he went to Baroda and thereafter his wife got him admitted in a private dispensary where he took treatment and the petitioner was not in a position to understand anything as his mental condition was not good. The petitioner had thus ceased to render any services in the police force since March, 1976.

5. In the discretionary exercise of the jurisdiction under Article 226 of the Constitution, this Court would, therefore, not entertain the petition even on merits as the constable who had not rendered any service in the police force after March, 1976 could not be expected to render any effective service after a gap of 23 years.

6. The petition, therefore, deserves to be dismissed and is accordingly dismissed.

Rule is discharged with no order as to costs.

Sd/-

August 6, 1999 (M.S. Shah, J.)

sundar/-